

# **EXHIBIT I**

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

_____	)	
IN RE: SMITH & NEPHEW	)	MDL No. 2775
BIRMINGHAM HIP RESURFACING	)	Master Docket
(BHR) HIP IMPLANT PRODUCTS	)	No. 1:17-md-2775
LIABILITY LITIGATION	)	
_____	)	JUDGE CATHERINE C. BLAKE
	)	

THE VIDEOTAPED DEPOSITION OF JASON B. SELLS

Taken on behalf of Plaintiffs

February 28, 2019

Kevin J. Weichman, CSR, CCR  
ILLINOIS CSR NUMBER: 084-003189  
MISSOURI CCR NUMBER: 915

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UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

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IN RE: SMITH & NEPHEW ) MDL No. 2775  
BIRMINGHAM HIP RESURFACING ) Master Docket  
(BHR) HIP IMPLANT PRODUCTS ) No. 1:17-md-2775  
LIABILITY LITIGATION )  
\_\_\_\_\_) JUDGE CATHERINE C. BLAKE

THE VIDEOTAPED DEPOSITION OF JASON B.  
SELLS, produced, sworn, and examined on behalf of  
the Plaintiffs, on Thursday, February 28, 2019,  
between the hours of 10:02 a.m. and 4:45 p.m. on  
that day, at the law offices of Wyatt, Tarrant &  
Combs, LLP, 6070 Poplar Avenue, Suite 300,  
Memphis, Tennessee 38199, before KEVIN J.  
WEICHMAN, an Illinois Certified Shorthand Reporter  
and a Certified Court Reporter within and for the  
County of St. Louis, State of Missouri.

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A P P E A R A N C E S

The MDL Plaintiffs were represented by Ms. Genevieve M. Zimmerman of the law firm of Meshbeshier & Spence, 1616 Park Avenue, Minneapolis, Minnesota 55404.

Also present for the MDL Plaintiffs: Mr. Gabriel Assaad, of the law firm of Kennedy Hodges, LLP, 4409 Montrose Blvd., Suite 200, Houston, Texas 77006.

Smith & Nephew, Inc. was represented by Mr. David W. O'Quinn of the law firm of Irwin Fritchier Urquhart & Moore, LLC, 400 Poydras Street, Suite 2700, New Orleans, Louisiana 70130.

APPEARING TELEPHONICALLY: West Hills Hospital Medical Center was represented by Mr. John T. Maxwell of the law firm of Dummitt, Buchholz & Trapp, 11755 Wilshire Boulevard, 15th Floor, Los Angeles, California 90025-1506.

The Plaintiffs Barbara Pietrowski-Valdez and Reuben Valdez, in the case of Valdez versus Smith & Nephew, et al., pending in Los Angeles Superior Court, with case number BC684293, were represented by Mr. Joseph J. Iacopino of the law firm of Law Offices of Joseph J. Iacopino, 233 Wilshire Boulevard, Suite 700, Santa Monica, California 90401.

Also Present: Mr. Tolly Murff, Videographer representing Paszkiewicz Court Reporting, 26 Ginger Creek Parkway, Glen Carbon, Illinois 62034.

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1 MS. ZIMMERMAN: Genevieve Zimmerman on  
2 behalf of the MDL plaintiffs.

3 MR. ASSAAD: Gabriel Assaad on behalf of  
4 the MDL plaintiffs.

5 MR. IACOPINO: Joe Iacopino on behalf of  
6 plaintiffs Barbara Pietrowski-Valdez and Reuben  
7 Valdez, in the case of Valdez versus  
8 Smith & Nephew, et al., pending in Los Angeles  
9 Superior Court, with case number BC684293.

10 MR. O'QUINN: And David O'Quinn for  
11 Smith & Nephew, Inc.

12 THE VIDEOGRAPHER: Thank you. Would the  
13 court reporter please swear in the witness.

14 \* \* \* \* \*

15 JASON B. SELLS,  
16 of lawful age, being produced, sworn, and examined  
17 on the part of the Plaintiffs, and after  
18 responding "Yes, I do" to the oath administered by  
19 the court reporter, deposes and says:

20 \* \* \*

21 THE REPORTER: Go ahead, Joe.

22 MR. IACOPINO: So I have a preliminary  
23 statement that I wanted to put on the record, to  
24 just clarify that even though this deposition is  
25 being ostensibly taken in another case, that will

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1 MR. O'QUINN: Objection. Form. Scope.  
2 Well, I will withdraw the scope. Object to the  
3 form.

4 THE WITNESS: We placed on the market,  
5 put into interstate commerce the modular heads  
6 labeled for use in hemiarthroplasty indications.

7 Q. (By Ms. Zimmerman) And you made clear  
8 to the surgeons that were implanting that these  
9 particular devices were not to be used in a total  
10 hip replacement?

11 MR. O'QUINN: Object to the form.  
12 Scope.

13 THE WITNESS: The products -- the  
14 modular heads -- contained important medical  
15 information, a package insert or an IFU, you know,  
16 with each product that provides information on the  
17 intended use of those products; the intended use  
18 being hemiarthroplasty indications.

19 Q. (By Ms. Zimmerman) But the company knew  
20 that the surgeons were using these particular  
21 modular femoral heads in total hip arthroplasties;  
22 isn't that correct?

23 MR. O'QUINN: Objection. Scope.

24 THE WITNESS: I mean, the company  
25 doesn't dictate the practice of medicine, nor does

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1 the FDA. These devices placed on the market,  
2 sold, they were accompanied with labeling that  
3 described the use as being hemiarthroplasty  
4 intended uses.

5 Q. (By Ms. Zimmerman) But the company was  
6 aware that surgeons were using it for a total hip  
7 replacement, not just for a hemiarthroplasty,  
8 correct?

9 MR. O'QUINN: Objection. Scope.

10 THE WITNESS: I don't know.

11 Q. (By Ms. Zimmerman) You don't know or  
12 they didn't know?

13 **A. I don't know. We received clearance for**  
14 **the product, labeled the devices in accordance**  
15 **with that clearance, and the devices were sold in**  
16 **the U.S.**

17 Q. Do you have a color coding process for  
18 assisting a physician in matching products that  
19 could be used in a particular patient?

20 MR. O'QUINN: Objection. Scope. You  
21 can answer if you know.

22 THE WITNESS: As I remember, the labels  
23 had -- the modular head labels had a color code  
24 scheme that tied that product, the implant, to --  
25 an implant -- to a -- sorry. Tied the implant to

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1 an implant trial of the same color, yes.

2 Q. (By Ms. Zimmerman) So they were  
3 essentially color-coded stickers of some kind on  
4 the outside of the box; is that right?

5 **A. It's like a color border on the label**  
6 **that, again, if the color is red --**

7 Q. Red goes with red?

8 **A. The red implant is the same size as the**  
9 **red trial.**

10 Q. As you sit here today, is it your  
11 understanding that that's the only -- the only  
12 colors that are matched is the implant and the  
13 trial?

14 MR. O'QUINN: Object to the form.

15 THE WITNESS: The modular heads, you  
16 know, used outside the U.S. and approved outside  
17 the U.S. for use in total hip arthroplasty have a  
18 corresponding acetabular cup size that, I believe,  
19 shares the same color.

20 Q. (By Ms. Zimmerman) And the idea is  
21 probably -- you probably have kids, I have kids,  
22 you teach them to match like things with like  
23 things, right?

24 MR. O'QUINN: Object to the form.

25 Q. (By Ms. Zimmerman) The triangle goes

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1 into the triangle-shaped hole?

2 MR. O'QUINN: Object to the form.  
3 Scope.

4 THE WITNESS: So...

5 Q. (By Ms. Zimmerman) Was the purpose of  
6 the color coding on the outside of the boxes to  
7 facilitate implantation decisions by the surgeon?

8 MR. O'QUINN: Object to the scope.

9 THE WITNESS: The color coding was  
10 intended to say if you have a given size femoral  
11 head that's this color, the corresponding trial is  
12 the same color.

13 Q. (By Ms. Zimmerman) Right. And outside  
14 of the United States, you also had corresponding  
15 cups, right, that you could sell for use with the  
16 modular femoral head?

17 MR. O'QUINN: Object to the scope.

18 THE WITNESS: Outside of the United  
19 States, the modular heads approved for use in  
20 total hip arthroplasty, the head and the cup have  
21 the same color.

22 Q. (By Ms. Zimmerman) So if you're in the  
23 United Kingdom where it's okay, you had  
24 permission, legal permission, to be selling into  
25 commerce a total hip replacement, the modular

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1 femoral head in a total hip replacement construct,  
2 right? That was okay to do in the UK?

3 MR. O'QUINN: Object to the scope.

4 THE WITNESS: I believe, yes, we had the  
5 approval in Europe for a metal-on-metal total hip  
6 with modular heads and the Birmingham hip  
7 acetabular cup.

8 Q. (By Ms. Zimmerman) So when you were  
9 selling these products in Europe, one way to  
10 facilitate or make things easier for the  
11 implanting surgeon would say, Okay, blue stem goes  
12 with blue head goes with blue cup, and they're all  
13 a system and we know that they all match together.  
14 Is that a simplified but fair description?

15 MR. O'QUINN: Object to the scope.

16 THE WITNESS: There is a different color  
17 for each size and there are, you know, modular  
18 heads that are sized to fit with a specific size  
19 of acetabular cup in that total hip construct that  
20 you're talking about, and the same goes for the  
21 resurfacing with -- the BHR resurfacing component  
22 is used with a particular size of acetabu- -- of  
23 mating acetabular cup with the color coding we've  
24 talked about.

25 Q. (By Ms. Zimmerman) All right. And are